

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOLORES KAMINSKI, on Behalf of Herself :  
and all Similarly Situated Persons, : CIVIL ACTION  
Plaintiff :

v. :

FIRST UNION CORPORATION, as :  
successor- in-interest to CORESTATES, : No. 98-CV-1623  
FINANCIAL CORP., :  
Defendant. :

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MICHAEL IRETON, ROBERT GEIGER :  
JOSEPH MENTA, JOSEPH TYSON, : CIVIL ACTION  
WILLIAM GROSS, IV AND MARK :  
DEOURVAL, on Behalf of Themselves :  
and All Similarly Situated Persons, :  
Plaintiffs, :

v. :

FIRST UNION CORPORATION, as :  
successor- in-interest to CORESTATES : No. 98-CV-6318  
FINANCIAL CORP., :  
Defendant. :

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BARBARA JOHNSON and DENNIS :  
ANDERSON, :  
Plaintiffs, : CIVIL ACTION

v. :

FIRST UNION CORPORATION, as :  
successor- in-interest to CORESTATES : No. 99-CV-1509  
FINANCIAL CORP., :  
Defendant. :

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ANTHONY VENTURA, et al., on behalf of :  
Themselves and All Similarly Situated : CIVIL ACTION  
Persons, :  
Plaintiffs, :

v.	:	
	:	
FIRST UNION CORPORATION, as	:	
successor- in-interest to CORESTATES	:	No. 99-CV-4783
FINANCIAL CORP.,	:	
Defendant,	:	
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EVETTE ARANGO, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
FIRST UNION CORPORATION, as	:	
successor- in-interest to CORESTATES.,	:	No. 99-CV-6532
FINANCIAL CORP.,	:	
Defendant.	:	

**MEMORANDUM ORDER**

**J.M. KELLY, J.**

**MAY , 2001**

Presently before the Court is the Motion of Defendant First Union Corporation (“First Union”) to Dismiss the claim of Plaintiff, Deborah Jones (“Jones”). First Union argues that Jones’s two failures to attend scheduled depositions, as well as her refusal to comply with Court Orders and produce documents in discovery, necessitates her dismissal at this time. The parties have briefed this matter and a hearing was held before the Court.

This is an opt-in class action under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-626 (1994), filed by terminated employees of CoreStates Financial Corp. (“CoreStates”), the predecessor to First Union. Jones failed to respond to First Union’s initial Interrogatories, Requests for Admission and Requests for Production within the time required by the Federal Rules of Civil Procedure. First Union filed a Motion to Compel these responses. While First Union’s Motion to Compel was pending, Jones served responses to First Union’s Interrogatories, but produced no documents. First Union believes that Jones’s Interrogatory responses do not reflect a good faith attempt to participate in the litigation. First Union’s Motion to Compel was granted on August 9, 2000 and, armed with the Court’s Order, First Union

requested that Jones bring her discovery responses within compliance with the Court's Order. Jones then produced supplemental responses and documents that First Union believes are still insufficient. Jones stated at that time that other documents were destroyed in a home fire. Finally, Jones twice failed to appear for her scheduled deposition.

Jones claims that she missed her first deposition because she was ill and missed her second deposition because she overslept. She was finally deposed after this Motion was filed and prior to the hearing before the Court. Jones has now testified that she possesses no additional documents. It also appears that the fire that she blamed for her lack of documents occurred before she worked for CoreStates.

Where a party fails to cooperate with discovery, the court may dismiss the Complaint of the offending party. Fed. R. Civ. P. 37(b)(2)(C). The court may also award attorney's fees to a party that is required to file a motion to compel in order to coerce compliance with discovery. Before dismissing a complaint for non-compliance with court orders, the court should consider: (1) the personal responsibility of the party; (2) prejudice to the adversary caused by the party's conduct; (3) any history of dilatoriness; (4) whether the conduct was willful or in bad faith; (5) the effectiveness of lesser sanctions; and (6) whether the underlying claim is meritorious. Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984).

Here, the two failures of Jones to attend her deposition were solely personal. It remains unclear why Jones does not have documents that relate to CoreState's BEST Plan or any subsequent employment. Defendant has been prejudiced in this matter by preparing for and appearance at two depositions that never took place. Although Jones's history of dilatoriness in this matter is short, it appears that most of her discovery related conduct has been dilatory. Whether Jones's conduct has been wilful or in bad faith remains an open question. The class claim, on the other hand, has demonstrated a modicum of meritoriousness as it has survived a Motion to Dismiss. While the acts of Jones thus far in this litigation seem to call for a stiff

sanction, the Court is not convinced that Jones should be completely foreclosed from presenting her claim. In order to reach a balance, the Court will dismiss Jones's claim without prejudice to her right to reinstate the claim upon payment of \$500.00 to represent the attorney's fees expended by First Union in two aborted depositions and the motion practice required to pursue discovery from Jones.

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FINANCIAL CORP., :  
Defendant. :

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FINANCIAL CORP., :  
Defendant. :

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Persons, :  
Plaintiffs, :

v. :

FIRST UNION CORPORATION, as :  
successor- in-interest to CORESTATES : No. 99-CV-4783  
FINANCIAL CORP., :  
Defendant, :

EVETTE ARANGO, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
FIRST UNION CORPORATION, as	:	
successor- in-interest to CORESTATES.,	:	No. 99-CV-6532
FINANCIAL CORP.,	:	
Defendant.	:	

**ORDER**

AND NOW, this     day of May, 2001, upon consideration of the Motion to Dismiss (Doc. No. 255) of Defendant, First Union Corporation (“First Union”), the Response of Plaintiff, Deborah Jones, the Reply thereto of First Union and after a hearing held in this matter, it is ORDERED:

1. The Motion to Dismiss is GRANTED. Deborah Jones’s claims against First Union are DISMISSED without prejudice.
2. Deborah Jones’s claims in these consolidated matters can be reinstated on or before May 18, 2001 upon filing a Certification with the Court stating that the sum of \$500.00 was paid to First Union for attorney’s fees expended by First Union in two aborted depositions and the motion practice required to pursue discovery from Jones.

BY THE COURT:

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JAMES McGIRR KELLY, J.